No. 02-1689

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GRUPO DATAFLUX,

Petitioner,

v.

ATLAS GLOBAL GROUP, L.P., OSCAR ROBLES-CANON, and FRANCISCO LLAMOSA,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's Rule 29.6 Statement was set forth at page ii of Petitioner's Opening Brief, and there are no amendments to that Statement.

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SUMMARY OF ARGUMENT

Atlas acknowledges that the Fifth Circuit created a new exception to the longstanding rule requiring a party's citizenship to be determined at the time suit is filed. *See* Br. for Respondents at 2. Atlas relies almost exclusively on *Caterpillar Inc. v. Lewis*, 519 U.S. 61 (1996), to support this new exception. *Caterpillar* cannot bear the weight Atlas would have it carry. *Caterpillar* did not address the circumstances presented in this case, and Atlas cannot convert *Caterpillar*'s silence into an endorsement of retroactive diversity jurisdiction based on post-filing changes in citizenship.

Atlas not only fails to find any dispositive language in *Caterpillar*, but also fails to identify any statute or rule that permits unilateral changes in citizenship to create subject matter jurisdiction after suit is filed. Atlas does not address the existence of 180 years of precedent applying the time-of-filing rule to changes in citizenship or the impact that history has on the interpretation of 28 U.S.C. § 1332(a). Atlas does not address the conflict between the Fifth Circuit's new exception and fundamental principles of jurisdiction, including the presumption against federal jurisdiction, the non-waivability of defects in subject matter jurisdiction, and a court's duty to dismiss when subject matter jurisdiction is lacking.

Atlas further fails to address the ramifications of the new rule it asks this Court to endorse, including the impact of such a rule on the principle that post-filing changes in citizenship cannot divest a court of diversity jurisdiction once it has been established. While Atlas contends in conclusory fashion that the Fifth Circuit's new exception is limited,

Atlas does not address the practical problems likely to flow from this new rule. *See* Br. for Respondents at 17-18; *compare* Br. for Petitioner at 18 n.12, 32-39.

The dispositive issue in this case is whether unilateral changes in a party's citizenship after suit is filed should be allowed to create diversity jurisdiction that did not exist at the time suit was filed. *See* Pet. for Writ of Cert. at i; Br. for Petitioner at i. The Court was not called upon to consider this issue in *Caterpillar*, and it did not do so. Under the time-of-filing rule, post-filing changes in citizenship do not affect the determination of whether diversity exists. Congress repeatedly has amended and re-enacted the statutory provisions governing diversity jurisdiction against the backdrop of this rule, thereby making it part of the fabric of congressional enactments.

Invocations of judicial economy are insufficient to overcome this longstanding interpretation and understanding of the diversity statute. In any event, the new problems created by the Fifth Circuit's new exception far outweigh any asserted benefit from rewriting 180 years of jurisprudence to resurrect a single six-day jury trial.

ARGUMENT

I. Atlas Misplaces Its Reliance on *Caterpillar*

Atlas relies on *Caterpillar* as support for the Fifth Circuit's new exception to the time-of-filing rule, but fails to cite any language in *Caterpillar* specifically authorizing the creation of diversity jurisdiction based on a party's

unilateral change in citizenship after suit is filed.[1] Instead, Atlas contends that the Fifth Circuit's rewrite of fundamental jurisdictional rules governing citizenship is permissible because nothing in *Caterpillar* expressly forbids such a rewrite. *See* Br. for Respondents at 3, 5, 6, 8, 12. This argument misses the point.

If the Court had intended in *Caterpillar* to overrule 180 years of precedent governing the time-of-filing rule as applied to changes in citizenship, such a far-reaching change presumably would have merited discussion in the Court's opinion. *Caterpillar* addressed only the circumstances presented in that case, and the Court's silence with respect to circumstances that were not presented does not suggest that lower courts are free to ignore well-settled jurisdictional principles governing the time at which citizenship is measured. This conclusion is underscored by an analysis of the pertinent statutory provisions.

A. *Caterpillar* Does Not Address the Circumstances Presented in This Case

Atlas errs in suggesting that an opinion addressing the impact of dismissing non-diverse parties under 28 U.S.C. §§ 1441 and 1446(b) implicitly undermines the time-of-filing

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1. Atlas quibbles with Dataflux's description of the Fifth Circuit's new exception. *See* Br. for Respondents at 1-2. The precise nature of Atlas' objection is unclear; the significance of the Fifth Circuit's change in settled law is not. Although the panel majority tried to downplay the magnitude of this change, the majority nonetheless acknowledged that retroactive creation of diversity jurisdiction by means of Atlas' post-filing change in citizenship differs from the dismissal mechanism analyzed in *Caterpillar*. *See* Pet. App. 8a-9a.

rule for changes in citizenship under 28 U.S.C. § 1332(a). *See* Br. for Respondents at 5-6.

1. Congress and the Courts Have Long Applied the Time-of-Filing Rule to the Determination of Citizenship Under Section 1332(a)

Atlas' error stems from its failure to appreciate that the jurisdictional issue in *Caterpillar* differs from the attempted jurisdictional fix in this case. *See* Br. for Respondents at 6 (quoting *Caterpillar Inc.*, 519 U.S. at 73). Dismissal of non-diverse parties sets the stage for removal under 28 U.S.C. §§ 1441 and 1446(b) in certain circumstances. Dismissal in the removal context is fundamentally different from discarding the time-of-filing rule in a non-removal context and giving effect to post-filing changes of citizenship under 28 U.S.C. § 1332(a).

As discussed in Dataflux's opening brief, the time-of-filing rule with respect to changes in citizenship has been followed for 180 years. *See* Br. for Petitioner at 10-14. The current diversity statute and its predecessors consistently have been interpreted to require the determination of citizenship at the time suit is filed, and to require subsequent changes in citizenship to be disregarded. *Id.* Congress' actions over the years in repeatedly re-enacting and amending the diversity statute while leaving intact the time-of-filing rule with respect to changes in citizenship clearly demonstrate a congressional mandate to determine citizenship under Section 1332(a) at the time suit is filed. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978) (consistent interpretation of Section 1332 and its predecessors to require complete diversity of citizenship, and Congress' repeated re-enactment and amendment of statute leaving complete

diversity requirement intact, "clearly demonstrates a congressional mandate" requiring complete diversity); *see also Pierce v. Underwood*, 487 U.S. 552, 567 (1988) (re-enactment of statute "generally includes the settled judicial interpretation"); *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (re-enactment of statute without change generally evidences intent to adopt judicial interpretation of statute).

It follows that the Fifth Circuit's new rule – at the very least – contravenes 28 U.S.C. § 1332(a) as interpreted to incorporate the time-of-filing rule governing post-filing changes in citizenship. *See* Br. for Petitioner at 10-14.[2]

2. The limits on diversity are both constitutional and statutory. *See* Br. for Petitioner at 16-17; *Owen Equip. & Erection Co.*, 437 U.S. at 372; *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530-31 (1967). The dissent below concluded that this case involves not only a lack of statutorily required complete diversity, but also an absence of constitutionally required minimum diversity. *See* Pet. App. 13a ("Therefore, the parties were not completely diverse. Indeed there was *no* diversity between the parties") (emphasis in original). Complete diversity involves a situation "where more than one plaintiff sues more than one defendant" so that "each plaintiff must be capable of suing each defendant." *Soderstrom v. Kungsholm Baking Co.*, 189 F.2d 1008, 1013-14 (7th Cir. 1951) (citing *Levering & Garrigues Co. v. Morrin*, 61 F.2d 115, 117 (2d Cir. 1932), and *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806)). This case does not involve multiple plaintiffs with different individual citizenships; it involves a single plaintiff with multiple citizenships. *See* Br. for Petitioner at 3. The dissent's statement suggests Atlas' Mexican citizenship at the time suit was filed means that constitutional diversity requirements were not satisfied because only one plaintiff sued only one defendant, and both were Mexican citizens at that time. *See* Pet. App. 13a; *see also Hodgson v. Bowerbank*, 9 U.S. (5 Cranch) 303 (1809) (no constitutional authority for diversity jurisdiction over suit wholly between aliens); *compare Signature*

(Cont'd)

This point is reinforced by the differences between the general diversity statute governing this case and the specific provisions of the removal statute at issue in *Caterpillar*.

2. *Caterpillar* Focused on a Different Procedure Governed by a Different Statute

In contrast to a case originally filed in federal court, removal involves additional statutory provisions and different considerations. *See* 14B CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE § 3723 at 571 (3d ed. 1998) ("But the practice in the removal context is somewhat different than it is for actions filed originally in the federal courts, in which . . . diversity is determined on the basis of the parties' citizenship at the time of commencement of the action"). This separate statutory structure was the focus of the Court's analysis in *Caterpillar*. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 43 (1998); *Caterpillar Inc.*, 519 U.S. at 75-77. Congress has expressly provided an exception to the time-of-filing rule in the removal context under certain circumstances, such as the dismissal of non-diverse parties. Congress has not provided

(Cont'd)
Props. Int'l L.P. v. City of Edmond, 310 F.3d 1258, 1260 n.1 (10th Cir. 2002), *cert. denied*, 123 S. Ct. 2273 (2003) (characterizing lack of diversity based upon multiple citizenships of partnership as failure of complete diversity). However, even assuming for argument's sake that constitutional requirements were satisfied by Atlas' additional non-Mexican citizenships, the Fifth Circuit's new exception still must be rejected because it violates the statutory requirements for diversity jurisdiction as interpreted in light of longstanding precedent. *See Owen Equip. & Erection Co.*, 437 U.S. at 371-74; *Zahn v. International Paper Co.*, 414 U.S. 291, 292-302 (1973).

such an exception under 28 U.S.C. § 1332(a) for post-filing changes in a party's citizenship.

The general rule in the removal context requires diversity both at the time of filing and at the time of removal. *See, e.g., La Confiance Compagnie Anonyme D'Assurance v. Hall*, 137 U.S. 61, 62 (1890). Under 28 U.S.C. § 1446(b), however, removal on diversity grounds is permitted up to one year after commencement of the action even when "the case stated by the initial pleading is not removable" if circumstances have changed to meet diversity requirements after the time of filing. 28 U.S.C. § 1446(b). This section comes into play when a plaintiff voluntarily dismisses a diversity-spoiling party. *See, e.g., In re Iowa Mfg. Co.*, 747 F.2d 462, 463 (8th Cir. 1984) (per curiam) ("[I]f the plaintiff voluntarily dismisses the non-diverse defendant, the case may be removed"). Section 1446(b) thus demonstrates a congressional intent to relax the time-of-filing rule in the removal context when the jurisdictional defect can be cured by dismissal of a non-diverse party.[3]

No congressional intent to relax the time-of-filing rule with respect to citizenship is evidenced under 28 U.S.C. § 1332(a). That provision contains no language comparable to Section 1446(b) and contains no language creating an

3. Even in that circumstance, the decision whether to remove is the defendant's choice to make. *See* 28 U.S.C. § 1441(a). The plaintiff cannot voluntarily act and then use its own action as a unilateral mechanism for removing the case. *Id.* The voluntary dismissal exception to the time-of-filing rule prevents a plaintiff from unilaterally defeating removal by joining a non-diverse defendant and then dismissing that defendant after diversity jurisdiction has been destroyed. *See* 14B CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE § 3723 at 574 (3d ed. 1998).

exception to the time-of-filing rule as applied to changes in citizenship. On the contrary, the multiple amendments and re-enactments of the diversity statute made in light of settled judicial interpretation applying the time-of-filing rule to changes in citizenship indicate a congressional intent to leave the time-of-filing rule intact. *See Owen Equip. & Erection Co.*, 437 U.S. at 371-74; *Zahn*, 414 U.S. at 292-302.[4]

Atlas complains that these distinctions treat removed cases differently from cases originally filed in federal court, and that they treat plaintiffs differently from defendants. *See* Br. for Respondents at 7-8. Perhaps the short answer is that different rules apply because Congress has chosen to apply different rules. That choice is appropriately left to Congress. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 197 (1990) ("[T]he course we take today does not so much disregard the policy of accommodating our diversity jurisdiction to . . . changing realities . . . as it honors the more important policy of leaving that to the people's elected representatives").

4. Indeed, Congress amended 28 U.S.C. § 1332(a) in 1958 and again in 1988 in part to ***decrease*** the number of cases filed in federal court based on diversity jurisdiction. S. REP. NO. 1830 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3101; H.R. REP. No. 100-889 (1988), *reprinted in* 1988 U.S.C.C.A.N. 5982, 6005. In connection with the 1958 amendment of 28 U.S.C. §1332(a), the Senate stated that a key change to the then-"present law [was] the increase of the amount in controversy from $3,000 to $10,000." S. REP. No. 1830 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3099. The amount-in-controversy threshold was increased to $50,000 in 1988 and again in 1996 to its current level of $75,000. *See* 28 U.S.C. § 1332(a). Expanding diversity jurisdiction in the manner advocated by Atlas and the Fifth Circuit thus contravenes congressional intent to restrict diversity jurisdiction.

Congress can expand or contract diversity jurisdiction within the boundaries permitted by Article III, and in so doing it can decree that procedures will operate differently for plaintiffs and defendants. *See, e.g.*, 28 U.S.C. § 1367(b) ("[T]he district courts shall ***not*** have supplemental jurisdiction under subsection (a) over claims ***by plaintiffs*** against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure" if inconsistent with Section 1332) (emphasis added); *see also* 28 U.S.C. § 1441(a) (permitting removal "***by the defendant or the defendants***" but not by plaintiff) (emphasis added).

Invocations of judicial economy cannot override the limits Congress has considered, adopted, and chosen to leave undisturbed. *See Owen Equip. & Erection Co.*, 437 U.S. at 377.[5] Allowing the existing limits on diversity "to be circumvented . . . would simply flout the congressional command." *Id.*

B. Because *Caterpillar* Did Not Address the Circumstances Presented in This Case, No Recognition of Post-Filing Changes in Citizenship Can Be Implied

These settled limits on diversity jurisdiction confirm that the D.C. Circuit properly refused to extend *Caterpillar* beyond the removal context. *Saadeh v. Farouki*, 107 F.3d

5. If Congress concludes legislative action is warranted to address considerations of judicial economy in this jurisdictional context, Congress is free to take such action just as it did in 1990 when it codified aspects of pendent and ancillary jurisdiction by enacting the supplemental jurisdiction statute. *See* 28 U.S.C. § 1367.

52, 56-57 (D.C. Cir. 1997).[6] These limits also confirm that Atlas overreaches when it tries to transform *Caterpillar*'s silence on an issue that was not presented into an implicit endorsement of post-filing changes in citizenship. *See* 15 JAMES WM. MOORE, ET AL., MOORE'S FEDERAL PRACTICE § 102.21[1] (3d ed. 2003) (The *Caterpillar* exception "is strictly limited . . . and is not a general principle that lack of diversity can be ignored if substantial judicial resources have been invested before it is discovered").

The Court's silence on post-filing changes in citizenship in *Caterpillar* should not be construed as a tacit overruling of 180 years of precedent. *See, e.g., Chambers v. Mississippi*, 410 U.S. 284, 303 (1973) (White, J., concurring) ("Normally, a court's silence on an important question would simply indicate that it was unnecessary to decide the issue because it was not properly before the court or for some other reason"). The resolution of this case should be grounded on what this Court affirmatively said in *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537 (1824), and in subsequent cases, rather than on what the Court ***did not say*** in *Caterpillar*. *See* Br. for Petitioner at 10-14.

Apart from *Caterpillar*'s silence, Atlas proffers a handful of additional arguments in support of the Fifth Circuit's new exception. These arguments do not withstand scrutiny.

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6. Contrary to Atlas' contention, the D.C. Circuit did not "reject" *Caterpillar*. *See* Br. for Respondents at 14. Rather, the D.C. Circuit recognized that *Caterpillar* 's removal-based analysis should not be transplanted to a case that does not involve removal and dismissal. *See Saadeh*, 107 F.3d at 56-57.

C. Atlas Advocates a New Rule Under Which Jurisdictional Defects May Be Cured Without Notice or Court Participation

Atlas asserts that "the event that cured the lack of diversity was not performed solely by the court" in *Caterpillar*. *See* Br. for Respondents at 9. Atlas once again misses the point. Even if the procedural steps utilized in *Caterpillar* were not undertaken solely by the district court, that court nonetheless had significant involvement and exercised significant control over the process – an involvement that this Court recognized would prevent manipulation by litigants. *See Caterpillar Inc.*, 519 U.S. at 77 ("The procedural requirements for removal remain enforceable by the federal trial court judges to whom those requirements are directly addressed. . . . The well-advised defendant, we are satisfied, will foresee the likely outcome of an unwarranted removal – a swift and nonreviewable remand order"). Here, in contrast, Atlas and the Fifth Circuit advocate a jurisdictional maneuver accomplished exclusively by Atlas without notice to the parties or the court and without court participation, which could encourage manipulation in future cases. This is a far different and far more troubling proposition.

D. The Line for Determining the Parties' Citizenship Already Has Been Drawn at the Time of Filing

Atlas erroneously attributes to Dataflux an argument that the line for determining the parties' citizenship should be drawn according to whether judgment has been entered. *See* Br. for Respondents at 11.

Dataflux asks this Court to continue drawing the line where it has been drawn since 1824 – at the time suit is filed. *See Mollan*, 22 U.S. (9 Wheat.) at 539. The fact that judgment had not yet been entered in this case at the time Dataflux raised the jurisdictional defect is significant only insofar as *Caterpillar* referenced the existence of a final judgment as an additional factor meriting consideration in the removal context. *See Caterpillar Inc.*, 519 U.S. at 77. Even if one were to assume for argument's sake that *Caterpillar*'s reasoning could be transplanted from a removal context to a non-removal context, the absence of any final judgment in this case would be a distinguishing factor in Dataflux's favor. But Atlas loses sight of Dataflux's main point: "[A] court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct. . . ." *Kontrick v. Ryan*, 2004 U.S. LEXIS 663, at *26 (Jan. 14, 2004).[7] Longstanding precedent establishes that even ***after*** judgment has been entered, the losing party still can raise the lack of diversity jurisdiction at any time and may do so in the Supreme Court in the first instance. *Id.* at *24 (citing *Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804)).

7. Because the time-of-filing rule establishes the line applicable in this case, Atlas cannot obtain any traction by emphasizing that a motion to dismiss was filed in *Saadeh* before trial. *See* Br. for Respondents at 14 (citing *Saadeh*, 107 F.3d at 54). Under the bright-line rule applied by the D.C. Circuit in *Saadeh*, the exact time at which the jurisdictional defect was raised is immaterial. If the jurisdictional defect exists at the commencement of litigation, that defect must be acted on no matter when it is recognized. *See Kontrick*, 2004 U.S. LEXIS 663, at *24.

E. *Newman-Green* Provides No Assistance to Atlas

Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 830 (1989), reiterated the general rule requiring diversity jurisdiction to be decided on the facts as they exist at the time suit is filed. This Court observed at the outset of its analysis that an exception to the time-of-filing rule had to exist in order for the rule to be overcome. *Id.* The Court determined that Federal Rule of Civil Procedure 21 provided such an exception under the circumstances of that case. *Id.* at 833. Even Atlas acknowledges that *Newman-Green* is distinguishable because it involved court-supervised dismissal rather than an unsupervised change in citizenship. *See* Br. for Respondents at 13.

Atlas nonetheless asserts that *Newman-Green* is "instructive." *Id.* As this Court recognized in *Keene Corporation v. United States*, 508 U.S. 200, 208 n.3 (1993), the "instructive" capacity of *Newman-Green* has its limits and does not encompass circumstances beyond dismissal of a diversity-spoiling litigant under Rule 21. Atlas has identified no statute or rule supporting the Fifth Circuit's new exception.

Lacking support in the rules, statutes, or case law, Atlas raises a number of practical and policy-based arguments to justify the Fifth Circuit's new exception. This tack also fails.

II. Atlas' Arguments Do Not Justify Departing From the Settled Time-of-Filing Rule as Applied to Changes in Citizenship

A. If a Court Can Raise Lack of Subject Matter Jurisdiction at Any Time, Litigants Can Do So as Well

Atlas largely ignores the practical problems flowing from the Fifth Circuit's new exception to the time-of-filing rule. To the extent Atlas attempts to address them, Atlas suggests that a court, on its own initiative, could raise a threshold lack of diversity jurisdiction at any time – even if the litigants themselves could not do so after a dispositive ruling or verdict under the Fifth Circuit's new rule. *See* Br. for Respondents at 7, 10. Atlas' *ad hoc* attempt to minimize the damage the Fifth Circuit's new exception will inflict on existing jurisprudence fails on several fronts.[8]

The Fifth Circuit's decision does not expressly or implicitly recognize Atlas' suggested exception to the exception. Additionally, Atlas' exception would fatally undermine the very rule it seeks to uphold. While the Fifth Circuit's rule would bar parties from filing a motion to dismiss a case for lack of diversity jurisdiction after a dispositive ruling or verdict, nothing would stop parties from simply informing the court that a jurisdictional defect exists – which would require the court to dismiss the case. FED. R. CIV. P. 12(h)(3).

8. In addition to disregarding 180 years of jurisprudence enforcing the time-of-filing rule with respect to changes in citizenship, the Fifth Circuit's new exception also contravenes Federal Rule of Civil Procedure 12(h)(3), which requires a court to dismiss a case "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter."

Atlas' suggestion is even more unworkable than the new exception formulated by the Fifth Circuit. No useful purpose would be served by making a threshold determination of subject matter jurisdiction dependent upon whether the defect is discovered by the court on its own, or is instead brought to the court's attention by one of the litigants. If subject matter jurisdiction is lacking, it should not matter who first discovers the problem.

B. Applying the Settled Rule Will Not Create an Incentive to Refrain From Identifying Jurisdictional Flaws

Having failed to address the prospects for manipulation and confusion created by the Fifth Circuit's new rule, Atlas attempts unsuccessfully to imagine scenarios involving manipulation under the traditional time-of-filing rule. *See* Br. for Respondents at 10-11.

A defendant is not likely to wait for the jury's verdict before deciding whether to complain of a threshold jurisdictional defect it became aware of earlier. Little incentive exists to use such a strategy because the lack of jurisdiction cuts both ways. If a defendant wins at trial knowing a defect exists in subject matter jurisdiction, the defendant's win is subject to being negated just as thoroughly as a plaintiff's win.

Because a lack of subject matter jurisdiction cuts both ways and the parties cannot know who will prevail in the trial court until all proceedings are complete, no real incentive exists to lie behind the log. To the contrary, renewed emphasis on the bright-line rule requiring citizenship to be determined at the time suit is filed would provide renewed incentive for

courts and litigants alike to scrutinize subject matter jurisdiction at the outset of litigation.

C. Atlas Cannot Plausibly Contend That "Inconsistent Factfindings" Justify Refusing to Enforce the Time-of-Filing Rule

Atlas errs when it contends that the Fifth Circuit's new rule serves public policy interests by preventing "inconsistent factfindings." Br. for Respondents at 18-19. Once the court dismisses a case for lack of jurisdiction, the judgment and any verdict upon which judgment is based become void. *See, e.g.*, 11 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE § 2862 (2d ed. 1995) (judgment by court that lacks subject matter jurisdiction over case is void); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996) (same). Because the original verdict and judgment are void, they have no legal effect. Even if a subsequent trial yields a different verdict, a retrial following dismissal for lack of jurisdiction is no more of a problem than a retrial after an appellate court reverses the original judgment and remands for a new trial. FED. R. CIV. P. 59(a).

Atlas also overlooks that federal courts already are obligated to dismiss a case at any stage of the litigation (post-verdict or otherwise) when an initial lack of subject matter jurisdiction becomes apparent. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Atlas does not and could not suggest that federal courts create an insurmountable problem when they fulfill this existing obligation.

D. Judicial Economy Does Not Outweigh All Other Considerations

Atlas is left to argue that considerations of judicial economy must trump all threshold jurisdictional requirements in this case. *See* Br. for Respondents at 15-17. This argument is not enough to overcome 180 years of precedent requiring determination of the parties' citizenship at the time suit is filed.

This Court has not hesitated to enforce fundamental subject matter jurisdictional requirements even when those requirements mandate dismissal after trial and judgment, and even in the face of protests that doing so sacrifices judicial economy. *See Owen Equip. & Erection Co.*, 437 U.S. at 377. As the Court has emphasized, "[N]either the convenience of the litigants nor considerations of judicial economy can suffice to justify extension" of federal jurisdiction beyond its prescribed limits. *Id.*

The Court's words in *Owen* apply with equal force in this case.

CONCLUSION

Petitioner Grupo Dataflux asks this Court to reverse the judgment of the court of appeals and to render judgment affirming the trial court's dismissal for lack of subject matter jurisdiction. In the alternative, Dataflux asks this Court to remand the case to the Fifth Circuit for further proceedings consistent with this Court's opinion. Dataflux further requests all other relief to which it may be entitled.

Respectfully submitted,

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